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PART II—Section 2

Bills and Reports of Select Committees on Bills

PARLIAMENT OF INDIA

The following Bills were introduced in Parliament on the 8th August 1951:—

BILL No. 63 OF 1951

A bill further to amend the Indian Companies Act, 1913.

BE it enacted by Parliament as follows:—

1. **Short title.**—This Act may be called the Indian Companies (Amendment) Act, 1951.

2. **Insertion of new section 86J in Act VII of 1913.**—After section 86I of the Indian Companies Act, 1913 (hereinafter referred to as the principal Act), the following section shall be inserted, namely:—

“86J. *Restrictions on amendment of articles relating to appointment of directors.*—In the case of a company not being a company managed by a managing agent, any amendment in the articles of, or any variation in any agreement with, the company relating to the appointment or election of a managing director or a director not liable to retire by rotation shall, notwithstanding anything to the contrary contained in any other provision of this Act or in the articles of agreement, be void unless approved by the Central Government.”

3. **Insertion of new section 87AA in Act VII of 1913.**—After section 87A of the principal Act, the following section shall be inserted, namely:—

“87AA. *Restrictions on extension of term of office of managing agents.*—In the case of a company, managed by a managing agent, any amendment in the articles of, or any variation in any agreement with, the company which purports to extend, or has the effect of extending, the term of office of a managing agent holding office as such on the 21st day of July, 1951, shall, notwithstanding anything to the contrary contained in any other provision of this Act or in the articles or agreement, be void unless approved by the Central Government.”

4. Amendment of section 87B, Act VII of 1913.—For clause (c) of section 87B of the principal Act, the following clause shall be substituted, namely:—

“(c) a transfer of his office by a managing agent shall be void, unless approved by the company in general meeting and also by the Central Government;”.

5. Insertion of new section 87BB in Act VII of 1913.—After section 87B of the principal Act, the following section shall be inserted, namely:—

“87BB *Restrictions on change in the constitution of a managing agent.*—In the case of a company managed by a managing agent which is a firm or a company, no change in the constitution of the managing agent, whether the change is caused by a change in the ownership of the shares held therein or by a change among the partners or board of directors or managers thereof, shall have effect unless approved by the Central Government, and until such approval is obtained, no such firm or company shall be entitled to be the managing agent of the company.

Explanation.—A change in the ownership of shares in a managing agent which is a company caused by the death of any shareholder therein, or a change among the partners of a managing agent which is a firm, or a change in the board of directors or managers of a managing agent which is a company, caused by the death, or retirement by efflux of time, of a partner, director or manager, as the case may be, shall not be deemed to be a change in the constitution of a managing agent within the meaning of this section.”

6. Insertion of new section 87CC in Act VII of 1913.—After section 87C of the principal Act, the following section shall be inserted, namely:—

“87CC. *Restrictions on amendment of articles or agreement relating to appointment or remuneration of managing agents, etc.*—In the case of a company managed by a managing agent, any amendment in the articles of, or any variation in any agreement with, the company—

(a) which relates to the appointment of the managing agent, or

(b) which purports to increase, or has the effect of increasing, the remuneration of the managing agent, managing director or a director not liable to retire by rotation, as the case may be,

shall, notwithstanding anything to the contrary contained in any other provision of this Act or in the articles or agreement, be void, unless approved by the Central Government:

Provided that nothing herein contained shall apply to the remuneration payable to a director for attending the meetings of the board of directors of which he is a member.”

7. Insertion of new sections 153C and 153D in Act VII of 1913.—In Part IV of the principal Act, before section 154, the following heading and sections shall be inserted, namely:—

'Alternative remedy to winding up in cases of mismanagement or oppression.

153C. *Power of court to act when company acts in a prejudicial manner or oppresses any of its members.*—(1) Without prejudice to any other action that may be taken, whether in pursuance of this Act or any other law for the time being in force, any member of a company who complains that the affairs of the company are being conducted—

(a) in a manner prejudicial to the interests of the company, or

(b) in a manner oppressive to some part of the members (including himself),

may make an application to the court for an order under this section.

(2) No application under sub-section (1) shall be made by any member, unless—

(a) in the case of a company having a share capital, the member complaining—

(i) has obtained the consent of not less than one hundred in number of the members of the company or not less than one-tenth in number of the members, whichever is less, or

(ii) holds not less than one-tenth of the issued share capital of the company upon which all calls and other sums due have been paid; and

(b) in the case of a company not having a share capital the member complaining has obtained the consent of not less than one-fifth in number of the members,

and the provisions of rule 8 of Order I of the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908), shall apply to any such application as it applies to any suit within the meaning of that rule.

(3) If on any such application the court is of opinion—

(a) that the company's affairs are being conducted as aforesaid, and

(b) that to wind up the company would unfairly and materially prejudice the interests of the company or any of its members, but otherwise the facts would justify the making of a winding-up order on the ground that it is just and equitable that the company should be wound-up, the court may, with a view to bringing to an end the matters complained of, make such order in relation thereto as it thinks fit.

(4) Without prejudice to the generality of the powers vested in a court under sub-section (3), any order made under that sub-section may provide for—

(a) the regulation of the conduct of the company's affairs in future;

(b) the purchase of the shares or interests of any members of the company by other members thereof or by the company;

(c) in the case of a purchase of shares or interests by the company being a company having a share capital, for the reduction accordingly of the company's capital or otherwise;

(d) for the termination of any agreement, howsoever arrived at, between the company and its managing agent, managing director or any of its other directors.

(5) Where an order under this section makes any alteration in, or addition to, the memorandum or articles of any company, then notwithstanding anything contained in any other provision of this Act, but subject to the provisions of the order, the company concerned shall not have power without the leave of the court to make any further alteration in or addition to the memorandum or articles inconsistent with the provisions of the order, but subject to the foregoing provisions of this sub-section the alterations or additions made by the order shall have the same effect as if duly made by a resolution of the company, and the provisions of this Act shall apply to the memorandum or articles as so altered or added to accordingly.

(6) A certified copy of every order under this section altering or adding to, or giving leave to alter or add to, the memorandum or articles of any company shall, within fifteen days after the making thereof, be delivered by the company to the registrar for registration, and if a company makes default in complying with the provisions of this sub-section, the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees

(7) It shall be lawful for the court, upon the application of any petitioner or of any respondent to a petition under this section and upon such terms as to the court appears just and equitable, to make any such interim order as it thinks fit for regulating the conduct of the affairs of the company pending the making of a final order in relation to the application.

(8) In any case in which the court makes an order terminating any agreement between the company and its managing agent or managing director or any of its other directors, as the case may be, the court may, if it appears to it that the managing agent, managing director or other director, as the case may be, has misapplied or retained or become liable or accountable for any money or property of the company or has been guilty of any misfeasance or breach of trust in relation

to the company, award by way of damages against the managing agent, managing director or other director such sum as it thinks fit, and the provisions of sections 235 and 236 of this Act shall apply as if the company were in the course of being wound-up and proceedings under section 235 had been commenced by a contributory within the time limited by that section.

Explanation.—For the purposes of this section, any material change after the 21st day of July, 1951, in the control of a company, or in the case of a company having a managing agent in the composition of the managing agent which is a firm or in the control of the managing agent which is a company, may be deemed by the court to be a fact which would justify the making of a winding-up order on the ground that it would be just and equitable that the company should be wound up:

Provided that the court is satisfied that by reason of the change the interests of the company or any of its members are or are likely to be unfairly and materially prejudiced.

153D. *Effect of termination of managing agency agreement. etc.*—(1) Where an agreement between a company and its managing agent, managing director or other director, as the case may be, is terminated by virtue of an order made under sub-section (8) of section 153C,—

(a) the order shall not give rise to any claim on the part of the managing agent, managing director or other director, as the case may be, for damages or for compensation for loss of office or otherwise, whether the claim is made in pursuance of the agreement or otherwise, and

(b) no managing agent, managing director or other director or any associate of such managing agent shall, without the leave of the court, be appointed or reappointed or be entitled to act as the managing agent, managing director or director or manager of the company for a period of five years from the date of the order.

(2) If any person acts as the managing agent or manager of a company in contravention of the provisions of this section, such person, and in the case of a company each of its directors, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

(3) No court shall grant leave under this section unless notice of the intention to apply for such leave has been served on the Central Government in the manner specified in section 80 of the Code of Civil Procedure, 1908 (Act V of 1908) in respect of suits against the Government.

Explanation.—In this section, the expression “associate of a managing agent” means—

- (a) any firm of which the managing agent is a partner;
- (b) any partner of the managing agent;
- (c) any private company, of which the managing agent is a member, director, managing agent or manager; and

(d) in the case of a managing agent which is a company, any subsidiary company of the managing agent and any director, managing agent or manager of the managing agent or any subsidiary company of the managing agent.'

8. **Insertion of new section 289B in Act VII of 1913.**—After section 289A of the principal Act, the following section shall be inserted, namely:—

"289B. Power of Central Government to appoint advisory commission and to make rules in respect of certain matters.—

(1) For the purpose of advising it in the exercise of its powers under section 86J, section 87AA, clause (c) of section 87B, section 87BB or section 87CC, the Central Government may constitute a commission consisting of not more than three persons with suitable qualifications and appoint one of them to be the chairman thereof.

(2) It shall be the duty of the commission to inquire into and advise the Central Government on all applications for approval made to the Central Government under any of the sections referred to in sub-section (1).

(3) Every application for approval made to the Central Government under any of the sections referred to in sub-section (1) shall be in such form as may be prescribed.

(4) For the purpose of making any inquiry under this section the commission may—

(a) require the production before it of any books or other documents in the possession of the company relating to any matter under inquiry;

(b) call for any further information or explanation if the commission is of opinion that such information or explanation is necessary in order that the books or other documents produced before it may afford full particulars of the matter to which they purport to relate;

(c) with such assistants as it thinks necessary, inspect any books or other documents so produced and make copies thereof or take extracts therefrom;

(d) examine on oath a managing director or any other officer of the company relating to any matter under inquiry and administer an oath accordingly to the person for the purpose.

(5) If any person refuses or neglects to produce any book or other document in his possession or custody which he is required to produce under this section or to answer any question put to him relating to any matter under inquiry, he shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine.

(6) No suit or other legal proceeding shall lie against the Central Government, the commission or any member of the commission in respect of anything which is in good faith done or intended to be done in pursuance of this section or the sections.

referred to in sub-section (1) or of any rules or orders made thereunder.”

9. Repeal of Ordinance III of 1951.—(1) The Indian Companies (Amendment) Ordinance, 1951 (III of 1951) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken in the exercise of any power conferred by or under the said Ordinance shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act, as if this Act were in force on the day on which such thing was done or action was taken.

STATEMENT OF OBJECTS AND REASONS

Trafficking in managing agency rights and cornering of shares in the open market with a view to acquiring control over the management of well-established and reputable companies for anti-social purposes have, since the war, reached such proportions as to make it necessary for the Government to take immediate steps to check the evils arising therefrom. The comprehensive amendment of the Company Law after receipt of the report of the Expert Committee which has been appointed to make recommendations after examining the operation of the existing law will take considerable time. Meanwhile, evidence has accumulated showing that the malpractices referred to have become very serious. Government have therefore had to promulgate an Ordinance to curb the growing evils. The Ordinance provides for:

(i) the prior approval of the Central Government to be obtained to any change in the controlling interests of an existing company and/or in the terms of appointment of new managing agents so as to prevent the imposition of any onerous terms on it either by the present or the incoming management;

(ii) such remedial action as the Court may deem fit to order in cases of gross mismanagement of a company's affairs by directors or managing agents or in cases of oppression of some members of the company; and

(iii) the setting up of a Commission to advise the Government on all applications for approval to changes in controlling interests and terms of the managing agency.

2. The present Bill is intended to replace the Ordinance.

3. Brief explanatory notes on the several clauses are given in the annexed notes on clauses.

C. D. DESHMUKH.

NEW DELHI;

The 4th August, 1951.

NOTES ON CLAUSES

Clause 2.—This clause, which applies only to companies managed by boards of directors, is intended to prevent any material change in the composition of the board taking place except with the prior approval of the Central Government.

Clause 3.—Section 87A of the Indian Companies Act, 1913, lays down the duration of appointment of a managing agent. Many cases have recently come to light where the terms of office of managing agents have been extended by the full period admissible under this section long before the expiry of their existing contracts, and this clause is intended to check this practice.

Clause 4.—This clause is designed to prevent the evil of trafficking in managing agencies.

Clause 5.—This clause is designed to prohibit any change in the controlling interest of a managing agent except with the prior approval of the Central Government. As the efficiency of managing agency firms or companies depends on the persons who hold a controlling interest in them, it is extremely desirable that changes in the controlling interest should be regulated. The Explanation removes from the scope of this clause immaterial changes in managing agencies.

Clause 6.—Under section 87C(2) of the Indian Companies Act, 1913, managing agents of companies may draw remuneration in addition to, or in any form other than, the remuneration specified in sub-section (1) with the sanction of the company by special resolution. Under this provision managing agents have often succeeded in securing for themselves excessive remuneration. The object of this clause is to prevent such practices and also to prohibit the payment of similar excessive remuneration to managing directors or other directors in such companies.

Clause 7.—Short of winding up, this clause provides a suitable remedy in cases where a company is managed in a manner prejudicial to the interests of the company or in a manner oppressive to some part of the members. The provisions of this clause are analogous to section 210 of the Companies Act, 1948, of the United Kingdom, and sufficient safeguards are provided so that the company in turn is not harassed by applications from individual shareholders.

Clause 8.—For the purpose of advising the Central Government in according approval to the various matters mentioned in this Bill, this clause provides for the appointment of a commission with necessary powers.

BILL NO. 64 OF 1951

A bill to confer on the President the power of the Punjab State Legislature to make laws and to authorise him to delegate such power to any other authority.

BE it enacted by Parliament as follows:—

1. Short title.—This Act may be called the Punjab State Legislature (Delegation of Powers) Act, 1951.

2. Definitions.—In this Act, unless the context otherwise requires—

(a) “article” means an article of the Constitution;

(b) “Proclamation” means the Proclamation issued on the twentieth day of June, 1951, by the President under clause (1) of article 356.

3. Conferment on the President of the power of the State Legislature.—

(1) The power of the Legislature of the State of Punjab to make laws, which has been declared by the Proclamation to be exercisable by or under the authority of Parliament, is hereby conferred on the President.

(2) In the exercise of the said power, the President may from time to time, whether Parliament is or is not in session, enact as a President's Act a Bill containing such provisions as he considers necessary.

4. Delegation of the legislative power conferred on the President by section 3.—The President may, by order published in the Official Gazette, delegate, subject to such conditions as he may think fit to impose, the power conferred on him by section 3 to such authority as may be specified in the Order

STATEMENT OF OBJECTS AND REASONS

By virtue of the Proclamation issued by the President on the 20th June, 1951, under article 356 of the Constitution, the powers of the Legislature of the State of Punjab are now exercisable by, or under the authority of, Parliament. Article 357(1)(a) of the Constitution provides for Parliament enacting a law conferring on the President the powers of the Legislature of the State and authorising him to delegate this, subject to such conditions as he may think fit to impose, to any other authority specified by him in that behalf.

If all legislative measures that it may be necessary to enact from time to time for the State of Punjab are to be taken up by Parliament it would require a great deal of time which would not be available and which would hold up measures of all-India importance.

This Bill, therefore, seeks during the period of emergency to confer on the President the power of the Legislature of the State of Punjab and also to authorise him to delegate it to the Governor subject to such conditions as he may think fit to impose.

C. RAJAGOPALACHARI.

NEW DELHI;

The 6th August, 1951.

The following Bill was introduced in Parliament on the 13th August, 1951:—

BILL No. 65 OF 1951

A bill to make special provisions for the separation of the interests of evacuees from those of other persons in property in which such other persons are also interested and for matters connected therewith.

WHEREAS it is expedient to make special provisions for the separation of the interests of evacuees from those of other persons in property in which such other persons are also interested and for matters connected therewith;

AND WHEREAS some of the aforesaid provisions may relate to certain matters in the State List and Parliament is empowered, in pursuance of a Resolution passed under article 249 of the Constitution, to make such laws;

BE it therefore enacted by Parliament as follows :—

CHAPTER I

PRELIMINARY

1. Short title and extent.—(1) This Act may be called the Evacuee Interest (Separation) Act, 1951.

(2) It extends to the whole of India except the States of Assam, West Bengal, Tripura, Manipur and Jammu and Kashmir.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) “claim” means the assertion by any person, not being an evacuee, of any right, title or interest in any property, whether such right, title or interest is claimed—

(i) as a co-sharer of an evacuee in the property; or

(ii) as a mortgagee of the interest of an evacuee in the property, or

(iii) as a mortgagor having mortgaged the property or any interest therein in favour of an evacuee,

(b) “competent officer” means an officer appointed as such by the State Government under section 4,

(c) “composite property” means any property—

(i) in which the interest of an evacuee consists of an undivided share held by him jointly with any other person, not being an evacuee, or

(ii) which belongs to an evacuee but is subject to mortgage in any form in favour of a person, not being an evacuee, or

(iii) which belongs to a person, not being an evacuee, but is subject to mortgage in any form in favour of an evacuee;

(d) “evacuee interest”, in relation to a composite property, means the right, title and interest of an evacuee in that property,

(e) “mortgage debt” means any liability in respect of a property due under any form of mortgage (including any unfructuary mortgage or mortgage by conditional sale) whether such liability is payable presently or in future or under any decree or order of a court or otherwise, or whether ascertained or not, which—

(i) in any case where it is incurred by an evacuee, is secured by the mortgage of the interest of the evacuee in the property in favour of a person, not being an evacuee,

(ii) in any case where it is incurred by a person not being an evacuee, is secured by the mortgage of the interest of such person in the property in favour of an evacuee;

but does not include any debt incurred after the 15th day of August, 1947;

(f) “original principal” means the mortgage debt as originally incurred excluding any interest on such debt which may, at any time, have been included as principal;

(g) “prescribed” means prescribed by rules made under this Act;

(h) all words and expressions used, but not defined, in this Act and defined in the Administration of Evacuee Property Act, 1950 (XXXI of 1950) shall have the meanings assigned to them in that Act.

3. Act to override other laws.—Save as otherwise expressly provided in this Act, the provisions of this Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law.

CHAPTER II

SEPARATION OF EVACUEE INTEREST IN COMPOSITE PROPERTY

4. Power to appoint competent officers.—(1) The State Government may, by notification in the Official Gazette, appoint as many competent officers as may be necessary for the purpose of performing the functions assigned to them by or under this Act, and a competent officer may perform his functions in such local area or areas as may be specified in the notification.

(2) Any Deputy Custodian who has held a judicial office, or has been an advocate or a pleader for at least seven years, shall be qualified to be appointed as a competent officer under this Act.

5. Jurisdiction of competent officers.—A competent officer shall have jurisdiction to decide any claim relating to any composite property situate within the limits of the local area of his jurisdiction and such cases or class of cases as may, by general or special order, be transferred to him by the State Government or the Custodian General under section 20.

6. Notice to submit claims.—For the purpose of determining or separating the evacuee interest in a composite property, any competent officer having jurisdiction over such property may, either of his own motion or on an application received in this behalf, issue, in such form and manner as may be prescribed,—

(a) a notice on every person who, in the opinion of the competent officer, may have claim in such property, or

(b) a general notice requiring all persons who claim interest in such property,

to submit claims, if any, in respect of that property.

7. Submission of claims.—(1) Any person claiming an interest in a composite property may, within sixty days of the date of the issue of the general notice or service of individual notice under section 6, as the case may be, submit to the competent officer a statement of his claim in writing and signed and verified in the prescribed manner:

Provided that the competent officer may entertain a claim after the expiry of the said period of sixty days if he is satisfied that the claimant was prevented by sufficient cause from filing the claim in time.

(2) A statement of claim under sub-section (1) shall be drawn up, as far as may be, in the form of pleadings under the Code of Civil Procedure, 1908 (Act V of 1908) and shall include the following particulars, namely:—

(a) the nature of the interest of the claimant in the composite property, whether such interest is claimed—

(i) as a co-sharer of the evacuee in the property; or

(ii) as a mortgagee of the interest of the evacuee in the property; or

(iii) as a mortgagor having mortgaged the property or any interest therein in favour of the evacuee;

(b) the extent of the interest in the composite property and the specification of its money value;

(c) where the claim is made either as a mortgagor or a mortgagee—

(i) the total amount of the mortgage debt due;

(ii) the history of the mortgage debt with particulars of the original principal and the rate of interest chargeable;

(iii) particulars of any property the possession of which has been taken by the mortgagee as security for, or in lieu of payment of, the principal sum advanced or interest thereon, together with the name and address of any person who may be in possession of any portion of such property under such mortgage;

(d) any other particulars which may be prescribed

(3) The claimant shall produce all documents on which he intends to rely together with a true copy of such document on the date on which the claim is filed under sub-section (1) or within such further time as may be allowed by the competent officer.

8. Inquiry into claims.—(1) On receipt of the statement of claims under section 7, the competent officer shall, subject to the provisions of this section, hold a summary inquiry into such claims and after taking such evidence and examining such documents as he may consider necessary, pass such order in relation to the claim as he thinks fit.

(2) If there is any doubt or dispute as to whether a liability is a mortgage debt or not or whether any claim submitted under section 7 exists, the competent officer shall decide such dispute:

Provided that a decree of a civil court passed after contest relating to any claim shall be conclusive evidence as to the existence of the claim:

Provided further that where such a decree was passed *ex parte*, the competent officer may decide the question afresh and on such decision being made, the *ex parte* decree shall be deemed to have no effect.

(3) Notwithstanding anything contained in sub-sections (1) and (2), where the Custodian under the Administration of Evacuee Property Act, 1950 (XXXI of 1950) has determined the evacuee interest in any composite property, no competent officer shall inquire into, or decide, such question and the decision of the Custodian shall be binding on the competent officer.

9. Decision of the competent officer.—The competent officer shall, after making an inquiry under section 8, make such further inquiry and take such

further evidence and examine such other documents as he may consider necessary and shall pass an order determining the evacuee interest in the property in question and the order may contain the following particulars, namely:—

(a) the money value of the property;

(b) in any case where the evacuee and the claimant are co-sharers in the property, their respective shares in the property and the money value of each such share;

(c) in any case where the claim is made by the mortgagor, the amount due under the claim and if the amount is not or cannot be paid by the mortgagor, the share in the property to which the evacuee would be entitled in lieu of the amount found due;

(d) in any case where the claim is made by the mortgagee, the amount payable under the claim found to exist and if the amount is not or cannot be paid to the mortgagee, the share in the property to which the claimant would be entitled in lieu of the amount payable to him and in deciding such questions, the competent officer shall have due regard to the provisions of section 10 and the circumstances of the case.

10. Limitation as to the amount of rate of interest chargeable.—(1)

Where the claim is in respect of a mortgage debt which has been secured by an evacuee by mortgaging his interest in any property, then, notwithstanding anything contained in any law for the time being in force or in any contract, no such mortgaged property shall be liable for the payment of—

(a) interest at a rate exceeding six per cent. per annum simple; or

(b) interest for any period after the 15th day of August, 1947; or

(c) any sum on account of interest greater than the original principal; or

(d) any sum in respect of the principal and interest which together with any amount already paid or included in any decree in respect of the debt exceeds twice the original principal,

whether such sum was paid or such decree was passed before or after the commencement of this Act.

(2) No mortgaged property shall be deemed to have been liable, before the commencement of this Act, for any interest in excess of the limits specified in sub-section (1) and any interest paid before such commencement in excess of the aforesaid limits shall be deemed to be a payment in reduction of the principal.

(3) Notwithstanding anything contained in any law for the time being in force or in any contract, where a mortgagee has taken possession on any terms whatsoever of any composite property or any part thereof as security for, or in lieu of payment of, the principal sum advanced or interest thereon, the competent officer shall, in determining the amount payable, prepare an account of the receipts of the mortgagee derived from the said property and after taking into account the expenses incurred by the mortgagee either for the cultivation or for the management or maintenance of the said property, shall credit the sum of such receipts in reduction of the amount, if any, chargeable as interest on the original principal, and so far as such sum exceeds any such interest, the reduction or discharge, as the case may be, of the original principal.

11. Re-opening of transactions.—Notwithstanding anything contained in any law for the time being in force, the competent officer may, for the purpose of determining the amount payable in respect of a mortgage debt,—

(a) re-open any transaction and take an account between the parties;

(b) re-open any decree passed by a civil court and modify the same in accordance with the principles set out in section 10; and

(c) release the mortgaged property of an evacuee of all liability in excess of the limits specified in section 10.

12. Separation of the interests of evacuees from those of claimants in composite property.—Notwithstanding anything to the contrary in any law or contract or any decree or order of a civil court, the competent officer may, subject to any rules that may be made in this behalf, take all such measures as he may consider necessary for the purpose of separating the interests of the evacuees from those of the claimants in any composite property, and in particular, may—

(a) pay to the claimant the amount of money assessed in respect of his share in the composite property or deposit the same in a civil court having jurisdiction over such property and take possession of the property free from all liabilities and the claimant may withdraw the amount in deposit in the civil court; or

(b) transfer the property to the claimant on payment by him of the amount of money assessed in respect of the share of the evacuee in the property; or

(c) sell the property and distribute the sale proceeds thereof between the Custodian and the claimant in proportion to the share of the evacuee and of the claimant in the property; or

(d) partition the property according to the shares of the evacuee and the claimant and take possession of the share allotted to the evacuee; or

(e) in the case of any claim of a mortgagee, pay to the claimant the amount payable as determined under section 9 and redeem the mortgaged property; or

(f) in the case of any claim of a mortgagor, accept the amount due in full satisfaction of the mortgage debt; or

(g) adopt a combination of all or some of the aforesaid measures.

13. Vesting of evacuee interest in the Custodian from free encumbrances and payments, etc., to be valid discharge from all claims.—Where in respect of any property, notice under section 6 is issued but no claim is found to exist and the competent officer determines the evacuee interest therein under section 9, or where any claim in respect of such property is found to exist and the competent officer separates the evacuee interest therein under section 12, the evacuee interest in the property thus determined or separated shall vest in the Custodian free from all encumbrances and liabilities, and any payment, transfer or partition made or effected under section 12 in satisfaction of any claim in respect of the property shall be a full and valid discharge of the competent officer, the Custodian and the evacuee from all claims in respect of the property and the Custodian may take possession of

such interest by evicting all persons who may be in occupation thereof and may, for that purpose, use or cause to be used, such force as may be necessary.

14. Rights of claimants *inter se* and by other persons against claimants not to be affected.—Nothing in this Chapter shall prejudice any rights in respect of the property transferred or delivered, or payment made, to a claimant under the provisions of this Act which any other claimant or other person may be entitled by due process of law to enforce against the claimant to whom the property is delivered or transferred or the payment is made.

CHAPTER III

APPEAL, REVISION AND POWERS AND PROCEDURES OF COMPETENT OFFICERS AND APPELLATE OFFICERS.

15. Appeals.—(1) Any person aggrieved by an order of the competent officer made under section 9 may, within thirty days from the date of the order, prefer an appeal to the Custodian General:

Provided that the Custodian General may entertain the appeal after the expiry of the said period of thirty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) The Custodian General to whom an appeal is preferred under sub-section (1) may dispose of it himself or make it over for disposal to such appellate officer as may be specified in this behalf by the Central Government.

(3) The Custodian General or appellate officer, as the case may be, may, after giving the parties an opportunity of being heard, confirm, vary or reverse the order appealed from and may pass such orders as he deems fit.

16. Powers of revision of the Custodian General.—The Custodian General may at any time call for the record of any proceeding in which the competent officer has passed an order for the purpose of satisfying himself as to the legality or propriety of any such order and may pass such order in relation thereto as he thinks fit:

Provided that the Custodian General shall not pass an order under this section prejudicially to any person without giving him a reasonable opportunity of being heard.

17. Amendment of orders.—Clerical or arithmetical mistakes in orders passed by a competent officer, an appellate officer or the Custodian General or errors arising therein from any accidental slip or omission, may, at any time, be corrected by the competent officer, appellate officer or the Custodian General either of his own motion or on an application received in this behalf from any of the parties.

18. Powers and procedure of competent officer, etc.—(1) The Custodian General or appellate officer and the competent officer shall have and exercise the same powers under this Act as are vested in the Custodian General and the Deputy Custodian respectively under the Administration of Evacuee Property Act, 1950 (XXXI of 1950).

(2) Without prejudice to the provisions of sub-section (1), a competent officer shall, for the purpose of holding any inquiry under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure,

1908 (Act V of 1908), when trying a suit in respect of the following matters, namely :—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) issuing commissions for the examination of witnesses;
- (d) any other matter which may be prescribed;

and the inquiry by the competent officer shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, 1860 (Act XLV of 1860) and the competent officer shall be deemed to be a civil court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898).

(3) For the purpose of holding any inquiry under this Act, the competent officer shall follow such procedure as may be prescribed and subject thereto, the provisions of the Code of Civil Procedure, 1908 (Act V of 1908) shall, as far as may be, apply to such proceedings.

19. Finality of orders.—Save as otherwise expressly provided in this Act, every order made by the Custodian General or any appellate officer or competent officer shall be final and shall not be called in question in any court by way of appeal or revision or in any original suit, application or execution proceedings.

CHAPTER IV

MISCELLANEOUS

20. Power to transfer cases.—The State Government or the Custodian General may, by order in writing at any time, transfer any case pending before a competent officer to another competent officer for holding the inquiry and the competent officer to whom the case is so transferred may, subject to any special directions in the order of transfer, proceed either *de novo* or from the stage at which it was transferred.

21. Jurisdiction of civil courts barred in certain matters.—(1) Save as otherwise expressly provided in this Act, no civil or revenue court shall entertain any suit or proceeding relating to any claim to composite property which the competent officer is empowered by or under this Act to decide, and no injunction in respect of any action taken or to be taken by the competent officer in respect of the composite property shall be granted by any civil court or other authority.

(2) All suits and proceedings in so far as they relate to such claims pending before any civil court or revenue court at the commencement of this Act shall, during the pendency of any proceeding under this Act, be stayed; and any attachment, charge, lien, injunction or order for the appointment of a receiver in respect of such claim subsisting on the commencement of this Act shall cease to have effect on such commencement and shall be deemed to be void.

(3) Nothing in sub-section (1) shall prevent any civil or revenue court from entertaining any suit or proceeding relating to any right in respect of any payment made, or property transferred or delivered, to a claimant under the provisions of this Act which any other claimant or other person may be

entitled under due process of law to enforce against the claimant to whom the payment is made or the property is delivered or transferred.

22. Recovery of dues to the evacuee and the Custodian.—Any sum due to the evacuee or the Custodian under the provisions of this Act may be recovered in the same manner as an arrear of land revenue.

23. Competent officer to be a public servant.—Every competent officer and appellate officer shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860 (Act XLV of 1860).

24. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the Custodian General or the appellate officer or the competent officer in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder.

25. Delegation of powers.—The Central Government may, by general or special order, direct that the powers exercisable by it by or under this Act, shall, in such circumstances and under such conditions, if any, as may be specified in the order, be exercisable also by the Custodian General or by the State Government.

26. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the form of any notice and the manner of its service;
- (b) the form and manner in which claims may be submitted and the particulars which a statement of claims may contain;
- (c) the manner in which inquiries under this Act may be held and the procedure to be followed by competent officers in such proceedings;
- (d) the form and manner in which appeals may be preferred against the order of competent officers;
- (e) the powers vested in a civil court which may be exercised by the competent officers while holding an inquiry under this Act;
- (f) the manner of separating the interests of the evacuees from those of claimants in any composite property;
- (g) any other matter which has to be, or may be, prescribed under this Act.

STATEMENT OF OBJECTS AND REASONS

Custodians in India are declaring the interest of evacuees in immovable property as evacuee property under the Administration of Evacuee Property Act, 1950. Where such evacuee interest is found to be inter-mixed with non-evacuee interest in one and the same property, it becomes difficult to determine the exact property or value thereof, which vests in the Custodian. It is proposed, by means of this Bill, to provide an expeditious method for the assessment and separation of evacuee and non-evacuee interests in such property. This will help in the evaluation of the evacuee property pool.

2. Certain properties in which evacuee and non-evacuee interests are inter-mixed are in the exclusive possession of non-evacuee co-sharers or mortgagees. The Bill will enable partition of such properties or settlement of claims of the non-evacuees, thereby releasing further property for the benefit of the evacuee property pool. In other cases, properties which contain non-evacuee admixture are in the possession of the Custodian and the non-evacuees holding interest therein are unable to obtain any benefit therefrom or satisfaction of their claims in view of the prohibitory provisions of section 17 of the Administration of Evacuee Property Act, 1950. The Bill will provide a way for the settlement of such claims. The separation of evacuee and non-evacuee interests will release the evacuee property pool from encumbrances and enable consolidation and better administration of the pool.

3. In assessing the respective interests of evacuees and non-evacuees, certain reliefs, *e.g.*, reduction of interest, have been provided in favour of evacuee mortgagors as they have been rendered unable to redeem their property on account of causes beyond their control, and their property might have deteriorated in the absence of their personal supervision.

AJIT PRASAD JAIN.

NEW DELHI;

The 2nd August, 1951.

M. N. KAUL,
Secretary.